IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 400.

Caroline W. Dobbins,
Plaintiff in Error,

vs.

City of Los Angeles, a municipal corporation,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

MOTION TO ADVANCE CAUSE AND TO HAVE SAME HEARD WITH CASE OF MARTIN DALY, PLAINTIFF IN ERROR VS. CHARLES ELTON, CHIEF OF POLICE OF THE CITY OF LOS ANGELES, DEFENDANT IN ERROR, NO. 401.

And now comes the said Caroline W. Dobbins, plaintiff in error, and moves to advance the above entitled case in accordance with the provisions of Par. 8 of Rule 26 of this court, the writ of error being to review the final decision of the Supreme Court of the state of California sustaining the judgment of the Superior Court of the county of Los Angeles, dismissing the complaint of the said plaintiff in error, filed therein; and that the said cause be heard with the case of Martin Daly, plaintiff in error, v. Charles Elton, Chief of Police of the city of Los Angeles, defendant in error, now pending in this court, October term 1903, No.

401; the same question being involved in both cases, and motion having been made to advance said case of Martin Daly, plaintiff in error, v. Charles Elton, Chief of Police of the city of Los Angeles, defendant in error, as the same is a criminal case.

LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,
Attorneys for Plaintiff in Error.

STATEMENT OF MATTERS INVOLVED AND REASONS FOR APPLICATION.

May It Please Your Honors:

The questions involved in this case are:

First: Whether the ordinance of the city of Los Angeles adopted March 3rd, 1902, in reference to the erection and maintenance of gas works, within certain portions of the city of Los Angeles, is valid and binding upon the plaintiff in error, as against her right to conduct a lawful business of erecting gas works and manufacturing gas, or as against the vested rights which she had acquired in reference thereto by virtue of legislative authority.

Second: Whether a court of equity has jurisdiction to restrain by injunction a municipality from instituting criminal proceedings when such prosecutions are threatened or instituted under color of an invalid ordinance, for the purpose of compelling the relinquishment of a property right.

This proceeding instituted in the Superior Court of the county of Los Angeles, state of California, was the complement of the case of Davis & Farnum Manufacturing Company v. the City of Los Angeles, heard and determined in this court at the October term, 1902, and reported in 189 U. S. Reports, 207.

The second of the above questions involved in this case was settled by this court in the case of Davis & Farnum Manufacturing Company v. City of Los Angeles, *supra;* and moreover, the Supreme Court of the state of California having held that the ordinances involved herein were valid, and that therefore the judgment of the Superior Court should be affirmed, this view, as they say in their opinion, made it "unnecessary to consider the questions elaborately

discussed by counsel, to-wit: whether or not a court of equity will ever enjoin a criminal prosecution."

The only question, therefore, before the court, is the same question that is presented in the case of Martin Daly, plaintiff in error, v. Charles Elton, defendant in error, No. 401 of this term.

A brief statement of the matters involved in this case will show that the same issues are presented in both cases.

The complaint of Caroline W. Dobbins was filed to restrain the city of Los Angeles and its officers, from enforcing certain municipal ordinances prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city.

The gravamen of the complaint, as in the case of Davis & Farnum Manufacturing Company v. the City of Los Angeles, was, that on September first, 1901, Caroline W. Dobbins made a contract with the Valley Gas and Fuel Company a California corporation, to build certain gas works for her, including all things necessary for the manufacture, recovery and storage of gas, on lands thereafter to be designated; that on September 17 the Davis & Farnum Manufacturing Company made a contract with the Gas and Fuel Company to erect upon Mrs. Dobbins' premises a water tank and gas holder, having a capacity of 100,000 cubic feet of gas, and that immediately thereafter it constructed and prepared the material and machinery necessary for the erection of the tank and gas holder, and shipped the same to Los Angeles; that on September 28th Mrs. Dobbins purchased certain lands in Los Angeles, which were within the limits wherein it was lawful to erect gas works as described in a municipal ordinance adopted August 26, 1901, and on November 1st, applied to the board of fire commissioners for a permit to erect such gas works; that on November

and her petition came on for hearing before the fire commissioners, and after proof had been made that all provisions of prior ordinances had been complied with, the matter was duly considered, and finally resulted, November 29, in a vote to grant a permit to erect and maintain the gas works.

That upon the 2nd day of November, Mrs. Dobbins' contractors began at once to lay the foundation for said works at a cost of upwards of $20,000, when on November 25, the city adopted an ordinance, amending that of August 26, 1901, including her property in the prohibited territory for the erection or maintenance of gas works, which ordinance, however, seems to have proved defective, and subsequently in February, 1902, caused certain of the employes of the Gas and Fuel Company to be arrested, charging them with a violation of this ordinance. Subsequently under new proceedings certain employes of the plaintiff were arrested and the work stopped.

Another ordinance was passed on March 3, 1902, also amending that of August 26, 1901, and other arrests were made of the employes for a violation of this ordinance. It was averred that the gas works are in an uncompleted condition, exposed to the elements and in danger of being destroyed; that Mrs. Dobbins had expended upwards of $40,000 in said enterprise, and that all of the aforesaid ordinances were adopted by the common council at the instigation of the Los Angeles Light Company, which has enjoyed a monopoly of the gas business for the last ten years.

In the case of Davis & Farnum Manufacturing Company v. Los Angeles, *supra*, the court below sustained the demurrer to the bill and the bill was dismissed, and this judgment of the Circuit Court was affirmed because it was held that Davis & Farnum Manufacturing Company, the

contractors, had no such interest in the subject matter, that they would sustain irreparable injury.

The complaint in this case is by Mrs. Dobbins, the owner of the land and the proposed gas works, to enjoin the city from interfering with carrying out the permit which she had obtained to erect these gas works, and with the rights she had acquired by the erection thereon of gas works, under authority of the municipality.

Notwithstanding this fact, a demurrer to her complaint was sustained by the Superior Court of Los Angeles county, upon a hearing before the Honorable Lucien Shaw, then judge of said Superior Court, and this judgment was affirmed by the Supreme Court of the state of California; that court by a divided court sustaining the validity of said ordinance of March 3rd, 1902.

It will appear from an examination of the record in this case that upon a petition for a rehearing before the Supreme Court of the state of California [Tr. R. F. 67] that Mr. Justice Van Dyke declined to act and that Chief Justice Beatty, Justice Loregan and Justice Henshaw dissented from the order denying a rehearing, Justice McFarland, who wrote the opinion in the case, Justice Angellotti and Justice Shaw (Justice Shaw having been elevated to the Supreme Bench of the state of California after having rendered his decision in the Superior Court of Los Angeles county, California, sustaining the demurrer to the said complaint of the said Caroline W. Dobbins herein) concurring in the order denying the petition for a rehearing.

From this order denying a petition for a rehearing and affirming the judgment of the Superior Court of the state of California, in and for the county of Los Angeles, a writ of error was by the said plaintiff an error, Caroline W.

Dobbins sued out to the said Supreme Court of the state of California and has been duly allowed.

This motion is made to advance this case for argument that it may be heard with the case of Daly v. Elton, Chief of Police, October term, 1903, No. 401, as the questions involved in this case are the same as in that case, motion having been made in that case that the same should be advanced, for the reason that it is a criminal case.

These two cases involve the same questions and should be heard together and argued as one case. [Rule 26, Par. 8.]

It is respectfully suggested that these cases be set down for hearing as soon as possible after the 15th of January, 1904.

Respectfully submitted,

LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,
Attorneys for Plaintiff in Error.